

AF # ZFW

PTO/SB/21 (02-04)

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Total Number of Pages in This Submission

Application Number	10/064,350
Filing Date	07/03/02
First Named Inventor	Timothy R. Hawes
Art Unit	3618
Examiner Name	Frank Bennett Vanaman
Attorney Docket Number	71234-0046

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Technology Center (TC)
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	John E. McGarry, Reg. No. 22,360
Signature	McGarry, Bair PC
Date	1.08.05

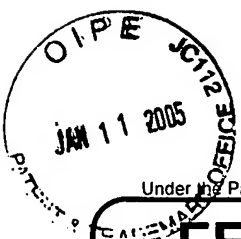
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PTO/SB/17 (10-03)

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

Complete if Known

Application Number	10/064,350
Filing Date	07/03/02
First Named Inventor	Timothy R. Hawes
Examiner Name	Frank Bennett Vanaman
Art Unit	3618
Attorney Docket No.	71234-0046

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit
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50-2003

McGarry Bair PC

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☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims	- 20 =	X	
Independent Claims	- 3 =	X	
Multiple Dependent			

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 86	2201 43	Independent claims in excess of 3
1203 290	2203 145	Multiple dependent claim, if not paid
1204 86	2204 43	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for <i>ex parte</i> reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 500	2402 250	Filing a brief in support of an appeal	250.00
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

SUBMITTED BY

Name (Print/Type)	John E. McGarry	Registration No. (Attorney/Agent)	22,360	Telephone	(616) 742-3500
Signature		Date	1.08.05		

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In the Patent Application of

Timothy R. Hawes.

Serial No.: 10/064,350

Filed: July 03, 2002

For: FENDER ASSEMBLY AND
ADJUSTABLE MOUNTING
BRACKET THEREFOR

Group Art Unit: 3618

Examiner: Vanaman, Frank B.

APPEAL BRIEF

Mail Stop AF
Commissioner for Patents
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Alexandria, VA 22313-1450

Sir:

This is an Appeal Brief under 37 C.F.R. §41.37 in support of Applicant's appeal of the Final Rejection of the Examiner dated July 14, 2004 of claims 1-7, 9, 10, 13-17, 19, 20, 25-27 and 30-37. Each of the topics required by 37 C.F.R. §41.37 is presented herewith and is labeled appropriately.

I. REAL PARTY IN INTEREST

Fleet Engineers, Inc., having offices in Muskegon, Michigan ("Fleet") is the real party in interest of the present application. An assignment of all rights in the present application to Fleet was executed by the inventors and recorded in the U.S. Patent and Trademark Office at Reel 012853, Frame 0230.

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II. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences related to the present application of which the Appellant is aware.

III. STATUS OF CLAIMS

Claims 1-7 and 9-51 are pending in the application. Claims 11, 12, 18, 21-24, 28, 29, and 38-51 are allowable if rewritten to include the limitations of the base claim and any intervening claim. Claims 1-7, 9, 10, 13-17, 19, 20, 25-27, and 30-37, which are presented in the Appendix, have been finally rejected by the Examiner. Accordingly, Appellants hereby appeal the final rejection of claims 1-7, 9, 10, 13-17, 19, 20, 25-27, and 30-37.

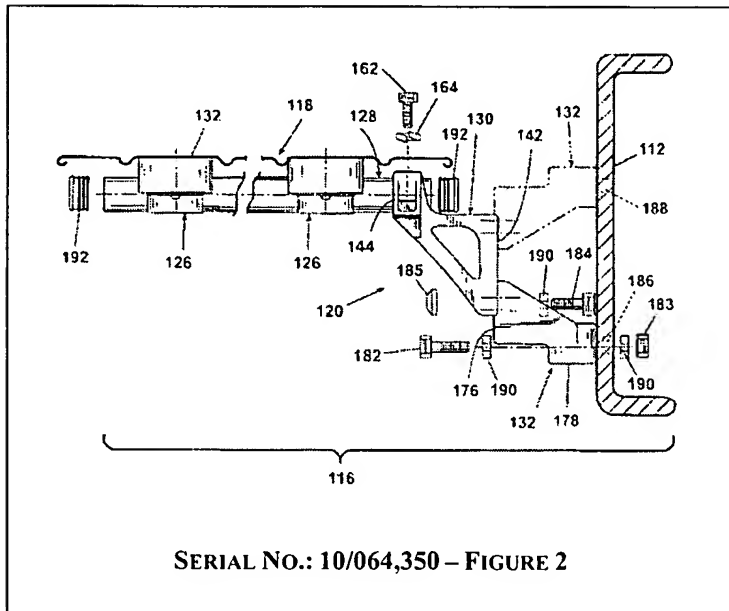
IV. STATUS OF AMENDMENTS

An amendment under 37 C.F.R. § 1.116 has been filed to correct an indefiniteness in claim 6. The amendment has not been acted on by the Examiner at this time.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A fender assembly 116 for a wheeled vehicle comprises a fender 118 adapted to overlie at least one of the wheels and having an upper surface and a lower surface. An elongated support arm 128 is mounted to either of the upper or lower surfaces of the fender 118 and has a longitudinal axis. A bracket assembly 121 is mounted to the support arm 128 and has a connector 182 for mounting the bracket assembly 121 to the vehicle frame for rotation about axis of rotation substantially parallel to and spaced from the longitudinal axis of the elongated support arm 128 to define an offset distance therebetween. The connector 182 includes a length-adjustable link 130, 132 to selectively adjust the offset distance between the longitudinal axis of

the elongated support arm 128 and the axis of rotation of the bracket assembly 121. *Application as filed, pg. 5, ln. 3-27; pg. 6, ln. 5-9, 36; pg. 7, ln. 1-33; pg. 8, ln. 4-34; pg. 9, ln. 1-6.*



A fender mounting bracket 121 for a wheeled vehicle comprises an elongated support arm 128 adapted to be mounted to either of an upper or lower surface of the fender 118 and defining a longitudinal axis. A length-adjustable link connection 130, 132 has a first portion 130 connected to the elongated support arm 128 and a second portion 132 adapted to be rotatably mounted to the vehicle frame at a rotational axis spaced from the

longitudinal axis of the elongated arm 128, wherein the offset spacing between the arm longitudinal axis and the rotational axis can be changed by adjusting the length of the link 130, 132. *Application as filed, pg. 5, ln. 3-27; pg. 6, ln. 5-9, 36; pg. 7, ln. 1-33; pg. 8, ln. 4-34; pg. 9, ln. 1-6*

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. In the rejection of July 14, 2004, the Examiner rejected claims 1-7, 9, 10, 13, 14, 25-27, and 31-33 as obvious under 35 U.S.C. §103(a) over U.S. Patent No. 5,950,975 to Zieske in view of U.S. Patent No. 5,895,064 to Laubach. Appellant disagrees with the Examiner's assertion that the Zieske and Laubach references render claims 1-7, 9, 10, 13, 14, 25-27, and 31-33 obvious to one skilled in the art.

2. In the rejection of July 14, 2004, the Examiner rejected claims 15-17, 19, and 34-

37 as obvious under 35 U.S.C. §103(a) over U.S. Patent No. 5,950,975 to Zieske in view of U.S. Patent No. 5,895,064 to Laubach and U.S. Patent No. 4,181,293 to Laribee. Appellant disagrees with the Examiner's assertion that the Zieske, Laubach, and Laribee references render claims 15-17, 19, and 34-37 obvious to one skilled in the art.

3. In the rejection of July 14, 2004, the Examiner rejected claim 30 as obvious under 35 U.S.C. §103(a) over U.S. Patent No. 5,950,975 to Zieske in view of U.S. Patent No. 5,895,064 to Laubach and Poly Soviet Union Patent No. 925-727 to Lengd Kalinin. Appellant disagrees with the Examiner's assertion that the Zieske, Laubach, and Kalinin references render claim 30 obvious to one skilled in the art.

4. In the rejection of July 14, 2004, the Examiner rejected claim 20 as indefinite under 35 U.S.C. §112, second paragraph, because of there is no antecedent basis for the "the threaded plate" in line 2 of that claim. Appellant disagrees with the Examiner's rejection of this claim because claim 20 has been amended to overcome the rejection and the amendment has been entered by the Examiner.

VII. ARGUMENT

1. THE INVENTIONS OF CLAIMS 1-7, 9, 10, 13, 14, 25-27, AND 31-33 ARE NOT OBVIOUS UNDER 35 U.S.C. §103(A) OVER ZIESKE '975 AND LAUBACH '064.

The Examiner's assertion of obviousness should be rejected since the Examiner has failed to satisfy the legal requirements for a *prima facie* case of obviousness. Moreover, the Examiner's asserted combination does not reach the claimed inventions described in claims 1-7, 9, 10, 13, 14, 25-27, at 31-33.

A conclusion of obviousness must be based upon an Examiner's factual findings. "The factual predicates underlying an obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art." *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

To establish a *prima facie* case of obviousness, three basic criteria must be met:

1. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
2. There must be a reasonable expectation of success.
3. The prior art reference must teach or suggest all the claimed limitations.

In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See also, MPEP 706.02(j) and 2143-2143.03.¹

In order to tenably combine references, there must be some suggestion in the references in order to make a tenable combination of disclosures. *In re Sang-Su Lee*, 277 F.3d 1338, 56 USPQ2d 1430 (Fed. Cir. 2000); *Ecolochem, Inc. v. Southern California Edison Company*, 277 F.3d. 1361, 56 USPQ2d 1065 (Fed. Cir. 2000). As aptly stated by Judge Newman in *Sang-Su Lee*;

...The patent examination process centers on prior art and the analysis thereof. When patentability turns on question of obviousness, the search for an analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. . . .

“The factual inquiry whether to combine references must be thorough and searching.” [Citation omitted] It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions and cannot be dispensed with. . . . *In re Dembiczak* 175 F.3d. 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (“Our case law makes clear that the best defense against subtle but powerful attraction of a hindsight based obviousness analysis is rigorous application of the requirement for a showing of the teaching or

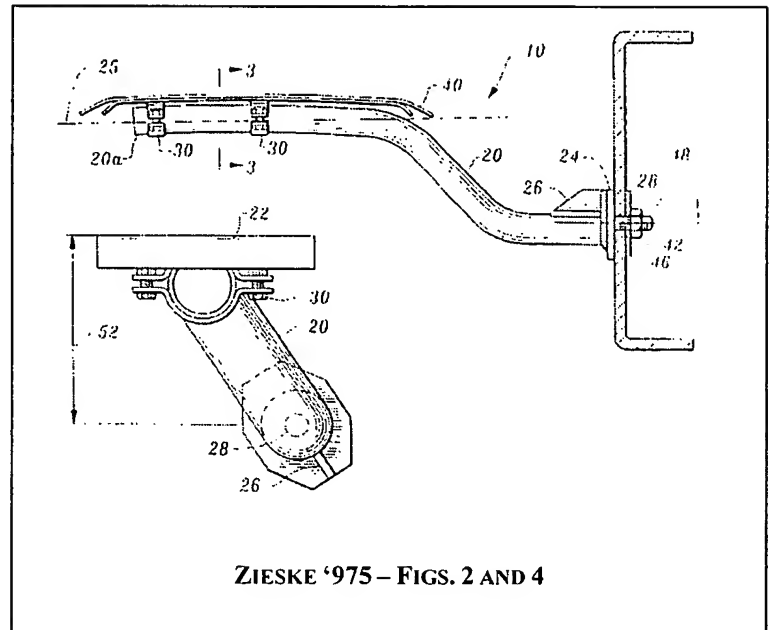
¹ According to the MPEP, the Examiner should identify (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (B) the difference or differences in the claim over the applied reference(s), (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. MPEP 706.02(j).

motivation to combine prior art references.”)

If any one of the obviousness criteria is not met, then a *prima facie* case of obviousness has not been made. In the present case, the rejection fails to meet several of the criteria, making the rejection unsustainable and the inventions of claims 1-7, 9, 10, 13, 14, 25-27, and 31-33 patentable. An analysis of the criteria supports this conclusion.

The Zieske '975 patent discloses an adjustable fender bracket 10 comprising an elongate tubular arm 20 bent at two central portions about an angle of about 45° to offset a frame mounting inner end 20*b* and a fender mounting outer end 20*a*. As a result of the bends, a first longitudinal axis 25 of the outer end 20*a* is offset in substantially parallel relationship from a second longitudinal axis 48 of the inner end 20*b*. In addition, the elongate arm 20 has a frame mount 24 for mounting the inner end thereof 20*b* to a vehicle frame 44 with a bolt 28 for rotational movement about the second longitudinal axis 48. The elongate arm 20 can be rotated about the second longitudinal axis 48 to selectively vary the vertical distance between the longitudinal axes 25, 48. The tubular arm 20 further has a plate 22 attached to the outer end 20*a* of the arm 20 for mounting a fender 40 thereto and for selective rotational and longitudinal movement with respect to the outer end 20*a* of the arm 20.

Zieske '975 teaches that this fender bracket 10 is adaptable for mounting a fender 40 at a precise vertical position with respect to the vehicle frame 44. The bracket 10 is height adjustable by mounting the inner end 20*b* on the bolt 28 which is coaxial with the second longitudinal axis 48 and about which the inner end 20*b* can rotate. The outer end 20*a* of the bracket 10 is adjustable vertically by simply rotating the inner end 20*b* of the bracket 10 about the second

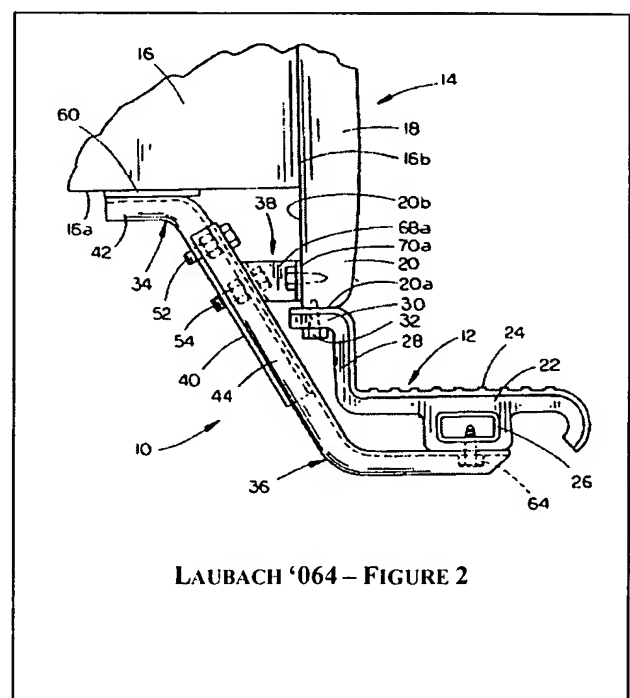


longitudinal axis 48. The plate 22 is also rotatable about the outer end 20a of the bracket 10, and can translate longitudinally along the outer end 20a of the bracket 10 so that it can be selectively positioned at the desired location of the fender 40. The Zieske bracket 10 enables adjustment of the position of the fender mounting end 20a with respect to the frame mounting end 20b about two axes, but is limited to rotational adjustment about the pivot mounting of the bracket 10 to the vehicle frame 44.

In other words, the Zieske mounting bracket 10 enables adjustment of the fender mounting end 20a of the bracket 10 along a horizontal X-axis that is parallel to the vehicle frame and a vertical Y-axis that is orthogonal to the vehicle frame. However, the bracket 10 cannot enable the adjustment of the position of the fender mounting end 20a along the Y-axis independent of movement along the X-axis. The movement of the fender mounting end 20a of the Zieske bracket is limited to a circle. Thus, adjustment of the vertical position of the Zieske bracket 10 will result in lateral horizontal movement of the fender mounting end 20a, which may be inconvenient, or impossible due to space and configuration limitations. Significantly, Zieske '975 does not recognize a need to make these X and Y adjustments independent of each other.

The Zieske bracket 10 is complete, and needs no further functional elements in order to accomplish its purpose as a device for accommodating a fender in various different positions.

The Laubach '064 patent discloses a universal mounting bracket 10 for running boards in which the bracket 10 is formed by two channel-shaped members 34, 36. Each of the bracket members 34, 36 is bent at about a 45° angle to form a foot 42, 46, respectively. The angular portions of the bracket members 34, 36 are slidable within one another, and fastened together to form a



bracket of a selected length with bolts 52, 54. The outer foot 46 of the lower member 34 is attached to the underside of the running board 12 with a vertically disposed bolt 64. The lower member 34 is also attached to a rocker panel 18 of the vehicle through a hanger 38 which is attached to the rocker panel 18 with screws 74. The inner foot 42 of the upper member 36 is not attached to the vehicle 14 or the running board 12, but simply bears against the underside of the floorboard 16 through a resilient pad 60. With the lower member 34 attached to the rocker panel 18, the upper member 36 can be slidably translated along the lower member 34 to bring the inner foot 42 into contact with, or away from, the floorboard 16 without affecting the position of the lower member 34. Vertical and horizontal adjustment of the position of the outer foot 46 is accomplished simply by moving the lower member 34 upwardly or downwardly relative to the hanger 38. There is no rotatability of the bracket 10 about the rocker panel 18 or the running board 12.

a. **The Examiner has failed to satisfy the legal requirements for a *prima facie* case of obviousness.**

There is no basis for making the alleged combination of Zieske '975 with Laubach '064. There is nothing in either of the references which would suggest their combination. When one reads the Zieske '975 patent, it is clear that the Zieske '975 bracket is capable of all necessary vertical and lateral adjustments in order to satisfy the function of adjustably mounting a fender to a frame. The inner end of the Zieske '975 bracket is rotatable about a horizontal axis to provide the vertical adjustment function for the outer end. The plate on the outer end of the Zieske '975 bracket can move toward and away from the frame as well as about the horizontal axis of the outer end of the bracket to accommodate the forward, central, and rear portions of the fender. There is no perceived need, and consequently no perceived motivation in Zieske '975, for modifying the Zieske bracket through the addition of the Laubach bracket.

By the same token, the device of the Laubach '064 patent is capable without modification of making selected adjustments of the vertical position of the running board. It accommodates

vertical adjustments with the inclined bracket member and the hanger, without the need for any additional adjustment device.

Furthermore, the Laubach running board mounting bracket has no relationship to a mounting bracket for a fender. There is no rotation of the Laubach bracket about the vehicle frame. Nor is there any rotation of the running board about the bracket. The Laubach channel-shaped bracket is an entirely different kind of bracket than the tubular Zieske bracket. There is no suggestion in Laubach of using this channel-shaped bracket for mounting a fender to a vehicle. The Zieske and Laubach brackets are entirely different in configuration and function in a different way to achieve a different result.

In accordance with the admonition of *In re Sang-Su Lee, supra*, the Laubach '064 reference cannot be tenably combined with the Zieske '975 reference. There is no suggestion or motivation for this combination because the Laubach '064 patent adds nothing that is not already covered by the Zieske '975 adjustable fender bracket for accommodating the height adjustment of a fender. No person having an ordinary level of skill in the fender mounting art would consider a combination of Zieske '975 and Laubach '064 because there is no perceived need in Zieske '975 for any additional adjustment.

The problem that Applicant's invention has solved has not been recognized by Zieske '975, and thus it would be wholly inappropriate to modify Zieske '975 to make the tubular arm 20 adjustable along the length between the two ends 20a, 20b as asserted by the Examiner. Furthermore, there are significant considerations militating against incorporating the Laubach adjustable length function between the two ends of the Zieske bracket. Incorporating the Laubach adjustable length function would inherently adjust the lateral or sideways position of the bracket ends at the same time any vertical or longitudinally horizontal offset is adjusted between the frame mounting axis and the fender mounting axis of the Zieske bracket. Any lateral offset adjustment between the ends of the Zieske bracket, which would be inherent in a length adjustment along the 45° central portion of the bracket, would move the fender mounting portion of the bracket farther away from the frame, which would be wholly undesirable. There is

a relatively small tolerance between the vehicle frame and the fender that must be maintained. In many cases, this tolerance might not be maintained with a length-wise adjustment of the central portion of the Zieske bracket. Thus, not only is the Examiner's suggested modification of Zieske '975 not suggested, it would produce an undesirable result in that it would cause an inappropriate lateral adjustment of the ends of the Zieske bracket.

There is yet another reason that the alleged combination of Zieske '975 and Laubauch '064 is inappropriate. Adjustment of the length of the central portion of the Zieske bracket would increase the likelihood that the outer central portion of the Zieske bracket would contact the truck tire, especially in jounce and rebound that occur when the wheel contacts bumps in the road during operation of the vehicle. As the central portion of the Zieske bracket is lengthened, the outer portion of the 45° central portion extends further into the area reserved for the vehicle tire. Needless to say, this contact would be wholly undesirable.

The alleged combination and modification of Zieske '975 bracket would also be inappropriate because there is no suggestion how the tubular structure of Zieske '975 could be modified to make the bracket adjustable between the ends with the U-shaped channels of Laubauch '064. The Zieske bracket is a one piece tube that is bent in two places. The Examiner has not suggested any manner in which the Zieske bracket could be modified to make it vertically adjustable between the ends. Laubach also does not teach any way in which the tubular bracket could be vertically adjustable between its ends.

Finally, the Examiner has failed to provide an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification, as required by the MPEP. At most, the Examiner engages in after-the-fact rationalization for the asserted combination to support the Examiner's hindsight reconstruction of Applicant's invention.

b. The Examiner's asserted combination does not reach the inventions of claims 1-7, 9, 10, 13, 14, 25-27, at 31-33.

Assuming, *arguendo*, that the alleged combination of Zieske '975 and Laubach '064 is made, however untenable, the alleged combination does not reach the claimed inventions. The combination would comprise the bent arm of Zieske '975 wherein the middle portion of the arm would comprise the two-piece adjustable member of Laubach '064.

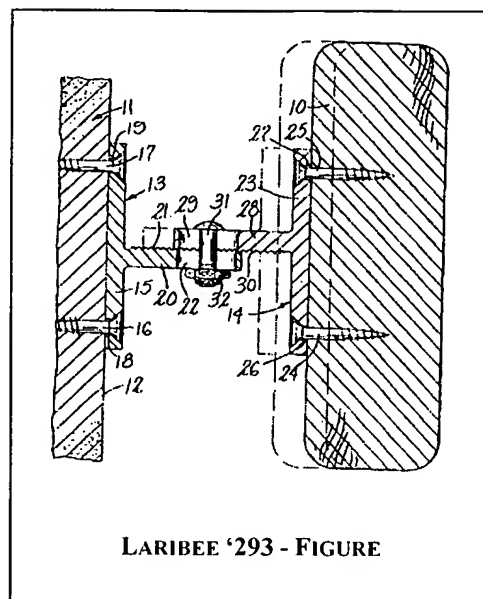
Claims 1-7, 9, 10, 13, 14, 25, 26, 27, 31, 32, and 33 distinguish over the alleged combination of Zieske '975 and Laubach '064 in calling for an elongated support arm *and* a bracket assembly *that is mounted to the support arm* and has a length adjustable link to selectively adjust the offset distance between the longitudinal axis of elongated support arm and the axis of rotation of the bracket assembly. The alleged combination of Zieske '975 and Laubach '064 may have a bracket assembly with a length adjustable link but it would not also have an elongated support arm *mounted to the* bracket assembly as required by claims 1-7, 9, 10, 13, 14, 25, 26, 27, 31, 32, and 33.

Further, claims 6, 7, 9 and 10 depend from claim 1 and further distinguish over the alleged combination of Zieske '975 and Laubach '064 in calling for flanges defining a channel and a nut having a base width substantially equal to the channel width. Further, claim 6 calls for linear edges on the base that interface with the flanges of the channel to restrain relative rotation of the nut with respect to the first bracket. The alleged combination of Zieske '975 and Laubach '064 would have a nut in a channel in a first bracket but would not have the claimed interface between the channel width and the base of the nut. Thus, claims 6, 7, 9 and 10 further distinguish over the alleged combination of Zieske '975 and Laubach '064.

In addition, claims 26 and 27 depend from claim 1 and further distinguish over the alleged combination of Zieske '975 and Laubach '064 in calling for a ring clamp on the first bracket for rotatably mounting the support arm. There is no elongated support arm in the alleged combination of Zieske '975 and Laubach '064 and thus there is no ring clamp on the bracket of

the alleged combination. Thus, claims 26 and 27 further distinguish over the alleged combination of Zieske '975 and Laubach '064.

In view of the foregoing, claims 1-7, 9, 10, 13, 14, 25, 26, 27, 31, 32, and 33 patentably distinguish over the alleged combination of Zieske '975 in view of Laubach '064. The Examiner's rejection of claims 1-7, 9, 10, 13, 14, 25-27, and 31-33 as obvious under 35 U.S.C. §103(a) should be reversed.



2. THE INVENTIONS OF CLAIMS 15-17, 19, AND 34-37 ARE NOT OBVIOUS UNDER 35 U.S.C. §103(A) OVER ZIESKE '975, LAUBACH '06, AND LARIBEE '293.

The uncombinability of Zieske '975 and Laubauch '064 has been discussed above, and is equally applicable here.

Larabee '293 discloses a two-piece handrail support structure 13, 14 for attaching a handrail 10 to a wall 11. The support structure pieces 13, 14 have cooperatively engageable serrated faces 21, 30, respectively.

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).

Laribee '293 is not in the field of Applicant's endeavor. Applicant's invention relates to an adjustable fender mounting bracket. Laribee '293 relates to support structures for mounting hand rails to walls. These are widely disparate fields. Additionally, Laribee '293 is not reasonably pertinent to the particular problem with which Applicant was concerned. The serrations in Applicant's invention aid in maintaining the selected positioning of the adjustment

bracket 130 and the mounting bracket 132 during mounting and adjustment of the bracket. This is particularly significant "since the adjustment bracket and the mounting bracket are relatively heavy and large, making it difficult or awkward for a single person to otherwise adjust."

Application as filed, pg. 11, ln. 10-12.

The purpose of the serrations in the Laribee handrail support structure 13, 14 is to "positively space the handrail from the wall." *Laribee '293, col. 2, ln. 61-62*. This is a significantly different problem than the problem addressed by Applicant's serrations. Thus, Laribee '293 is not analogous art and cannot be relied upon to support the Examiner's rejection.

Furthermore, there is no suggestion in either the Zieske '975 or the Laubach '064 references as to any type of serrations between adjustable parts, or the need therefor. The Laribee '293 patent discloses nothing with respect to brackets for mounting fenders or for mounting running boards onto vehicles. The Examiner's conclusory statement that the combination would ensure that a particular configuration of the two brackets would be positively maintained is not evidentiary support for the alleged combination. It is simply a conclusion which the Examiner has drawn without any factual basis.

However, even if the Zieske '975 patent could be tenably combined with the Laubach '064 and Laribee '293 references as suggested by the Examiner, it still would not meet the invention of claims 15-17, 19, and 34-37. The Laribee '293 reference does not add the deficiency to the alleged combination of Zieske '975 and Laubach '064 to meet independent claims 1 and 31 from which claims 15-17, 19, and 34-37 depend. Namely, the alleged combination of Zieske '975 and Laubach '064 does not have an elongated support arm *and* a bracket assembly *that is mounted to the support arm* and has a length adjustable link to selectively adjust the offset distance between the longitudinal axis of elongated support arm and the axis of rotation of the bracket assembly as set forth above. Thus claims 15-17, 19, and 34-37 distinguish over the alleged combination of Zieske '975, Laubach '064 and Laribee '293 in the same manner that claims 1 and 31 distinguish over the alleged combination of Zieske '975 and Laubach '064. Thus, claims 15-17, 19, and 34-37 are patentable over the alleged combination of

Zieske '975 in view of Laubach '064 and Laribee '293. The Examiner's rejection of claims 15-17, 19, and 30 4-37 as obvious under 35 U.S.C. §103(a) should be reversed.

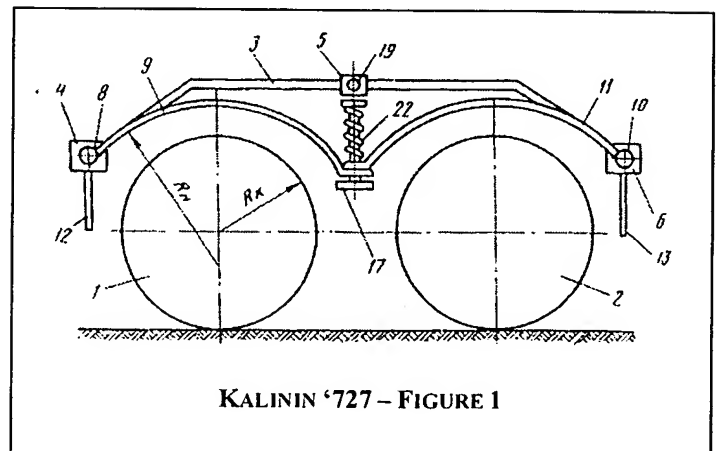
3. **THE INVENTION OF CLAIM 30 IS NOT OBVIOUS UNDER 35 U.S.C. §103(A) OVER ZIESKE '975, LAUBACH '064, AND KALININ '727.**

The uncombinability of Zieske '975 and Laubauch '064 has been discussed above, and is equally applicable here.

The Kalinin '727 reference discloses a fender mounting which includes a spring 22 at a central portion between a support pivot arm 19 and an inner portion of each of two fenders 9, 11. The other end of each fender is mounted on a pivot 8, 10. The purpose of the spring 22 and the pivot mounting 19 is to provide a yieldable support for the fenders 9, 11 in the event that the wheels 1, 2 contact the fenders 9, 11.

There is no basis for making the alleged combination of Zieske '975 with Laubach '064 and Kalinin '727. Even more remote is the combinability of Kalinin '727 with either of these references. There is no suggestion as to how the mounting spring would be incorporated into the Zieske '975 adjustable fender bracket.

Even if the combination were made, however untenably, it still would not reach Applicant's claimed invention. The alleged combination of Zieske '975 with Laubach '064 and Kalinin '727 would at best have a spring between the Zieske '973 plate 22 and a fender 40 (Fig. 10). The Kalinin reference does not add the deficiency to the alleged combination of Zieske '975 and Laubach '064 to meet independent claim 1 from which claim 30 depends. Namely, the alleged combination of Zieske '975 and Laubach '064 does not have an elongated support arm *and* a bracket assembly *that is mounted to the support arm* and has a



length adjustable link to selectively adjust the offset distance between the longitudinal axis of elongated support arm and the axis of rotation of the bracket assembly as set forth above. Thus claim 30 distinguishes over the alleged combination of Zieske '975, Laubach '064 and Kalinin '727 in the same manner that claim 1 distinguishes over the alleged combination of Zieske '975 and Laubach '064.

Further, the alleged combination of Zieske '975, Laubach '064 and Kalinin '727 does not have a vibration decoupling connector connecting the support arm to the fender as required by claim 30. The spring 22 of Kalinin '727 is not a vibration decoupling connector. A vibration decoupling connector decouples vibrations such as an elastomeric pad that isolates the fender from the mounting bracket. *Application as filed, pg. 5, ln. 31-33; See, also, U.S. Patent Application No. 2002/0024213, ¶¶ [0039] and [0041]*. No such decoupler is disclosed in the Kalinin '727 reference. The spring 22 is not a vibration decoupler.

The Zieske '975 patent cannot be tenably modified as suggested by the Examiner with the Laubach '064 and Kalinin '727 references. Claim 30 is patentable over the alleged combination of Zieske '975 in view of Laubach '064 and Kalinin '727. The Examiner's rejection of claim 30 as obvious under 35 U.S.C. §103(a) should be reversed.

4. CLAIM 20 IS NOT INDEFINITE UNDER 35 U.S.C. § 112.

Claim 20 was rejected under 35 U.S.C. § 112 as being indefinite because the phrase "threaded plate" had no antecedent precedent. In response to the final rejection, this phrase was amended to "flat plate" which appears in claim 19 from which claim 20 depends. The Examiner entered the amendment but did not indicate that claim 20 was allowable if written in independent form. It is believed that the failure to indicate that claim 20 is allowable was an oversight.

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CONCLUSION

In view of the foregoing, it is submitted that the continuing rejection of claims 1-7, 9, 10, 13-17, 19, 20, 25-27, and 30-37 is improper and should not be sustained. Therefore, a reversal of the rejection of claims 1-7, 9, 10, 13-17, 19, 20, 25-27, and 30-37 is respectfully requested.

Respectfully submitted,
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Dated: 1.08.05

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VIII. CLAIMS APPENDIX

1. A fender assembly for a vehicle comprising a longitudinal frame and carrying ground-engaging wheels supporting the frame above a road surface and positioned laterally of the frame, the fender assembly comprising:

a fender of a relatively linear cross dimension adapted to overlie at least one of the wheels and having an upper surface and a lower surface;

an elongated support arm mounted to either of the upper or lower surfaces of the fender and having a longitudinal axis;

a bracket assembly mounted to the support arm and having a connector for mounting the bracket assembly to the vehicle frame for rotation about an axis of rotation substantially parallel to and spaced from the longitudinal axis of the elongated support arm to define an offset distance therebetween; and

the bracket assembly further including a length-adjustable link to selectively adjust the offset distance between the longitudinal axis of the elongated support arm and the axis of rotation of the bracket assembly.

2. The fender assembly according to claim 1 wherein the length-adjustable link comprises a first bracket mounted to the support arm, a second bracket coupled to the connector, and the first and second brackets are coupled together for relative vertical movement therebetween.

3. The fender assembly according to claim 2 and further comprising a releasable fastener extending through the first and second brackets such that when the releasable fastener is in an unreleased condition, the relative position of the first and second brackets is fixed, and when the releasable fastener is in a released condition, the first and second brackets are adjustable relative to each other.

4. The fender assembly according to claim 3 wherein the releasable fastener comprises a bolt extending through aligned first and second openings in the first and second brackets, respectively, and a nut threadably mounted on the bolt, wherein the bolt is tightened to place the fastener in the unreleased condition, and the bolt is loosened to place the fastener in the released condition.

5. The fender assembly according to claim 4 wherein the nut comprises a base that abuts the first bracket when the fastener is in the unreleased condition.

6. The fender assembly according to claim 9 wherein the base has linear edges that interface with the spaced gussets to restrain relative rotation of the nut with respect to the first bracket.

7. The fender assembly according to claim 6 wherein the area of the base abutting the first bracket is at least twice as great as the cross-sectional area of the bolt.

* * *

9. The fender assembly according to claim 5 wherein the first bracket comprises flanges defining a channel therebetween and the base width is substantially equal to the channel width.

10. The fender assembly according to claim 6 wherein the base is rectangular.

* * *

13. The fender assembly according to claim 4 wherein at least one of the aligned first and second openings is a slot.

14. The fender assembly according to claim 13 wherein both aligned first and second openings are slots.

15. The fender assembly according to claim 4 wherein the first and second brackets each have a face with a serration and the serrations mesh when the fastener is in the unreleased

position.

16. The fender assembly according to claim 15 wherein a pair of spaced, parallel serrations is provided on both faces.

17. The fender assembly according to claim 16 wherein the first and second openings lie between the parallel serrations.

* * *

19. The fender assembly according to claim 4 wherein the second bracket comprises a substantially flat plate having opposing faces through which the second opening passes.

20. The fender assembly according to claim 19 wherein one of the faces of the flat plate is adapted to abut the vehicle frame and the fastener extends through the frame and the aligned first and second openings of the first and second brackets wherein the release of the fastener permits the rotation of at least the first bracket relative to the vehicle frame.

* * *

25. The fender assembly according to claim 4 wherein the first bracket comprises a releasable mount for rotatably mounting the elongated support arm thereto.

26. The fender assembly according to claim 25 wherein the releasable mount is a ring clamp defining an arm opening in which the arm is received.

27. The fender assembly according to claim 26 wherein the ring clamp arm opening and the arm have complementary circular cross sections such that the arm can be rotated within the arm opening when the ring clamp is unclamped and is rotationally fixed when the ring clamp is clamped.

* * *

30. The fender assembly according to claim 1 and further comprising at least one

vibration-decoupling connector connecting the support arm to the fender.

31. A fender mounting bracket for a vehicle comprising a longitudinal frame that carries ground engaging wheels above which is supported a fender, the fender mounting assembly comprising:

an elongated support arm adapted to be mounted to either of an upper or lower surface of the fender and defining a longitudinal axis;

a length-adjustable link connection having a first portion connected to the elongated support arm and a second portion adapted to be rotatably mounted to a vehicle frame at a rotational axis spaced from the longitudinal axis of the elongated arm, wherein the offset spacing between the arm longitudinal axis and the rotational axis can be changed by adjusting the length of the link.

32. The fender mounting bracket according to claim 31 wherein the first portion comprises a first bracket mounted to the support arm and the second portion comprises a second bracket mounted to the first bracket for relative movement therebetween.

33. The fender mounting bracket according to claim 32 and further comprising a releasable fastener extending through first and second openings in the first and second brackets, respectively, such that when the releasable fastener is in an unreleased condition, the relative position of the first and second brackets is fixed, and when the releasable fastener is in a released condition, the first and second brackets are selectively adjustable relative to each other.

34. The fender mounting bracket according to claim 33 wherein the first and second brackets each have a face with a serration and the serrations mesh when the fastener is in the unreleased position.

35. The fender mounting bracket according to claim 34 wherein a pair of spaced, parallel serrations is provided on both faces.

36. The fender mounting bracket according to claim 35 wherein the first and second

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openings lie between the parallel serrations.

37. The fender mounting bracket according to claim 36 and further comprising a mounting fastener, and wherein the second bracket has a third opening that receives the mounting fastener, wherein the mounting fastener is adapted to pass through the vehicle frame and into the third opening for rotatably mounting the second bracket to the vehicle frame.